IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 154, 155, 156 AND 157 OF 2005.

Writ Petition No. 154/2005.

1. Cosme Remedies Ltd.
And another. .... Petitioners.

Versus

1. Union of India
and others. .... Respondents.

Writ Petition No. 155/2005.

1. CFL Pharmaceuticals Ltd.
And another. .... Petitioners.

Versus

1. Union of India
and others. .... Respondents.

Writ Petition No. 156/2005.

1. Indi Pharma Private Limited
and another. ..... Petitioners.

Versus.

1. Union of India
and others. .... Respondents.

Writ Petition No. 157/2005.

1. Wallace Pharmaceuticals Pvt.
Ltd. And another. .... Petitioners.

Versus

1. Union of India
and others. ..... Respondents.

Mr. Jimmy Pochkhanawalla, Sr. Advocate with Mr. M.P. Bouxi and Mr. S.M.

Singhbal, Advocates for the Petitioners.

Mr. Joseph Vaz, Central Government Standing Counsel for the Respondents No.1, 3 and 4.

CORAM: S. S. PARKAR &
V. M. KANADE, JJ.

DATE: 18th JULY, 2005.

ORAL JUDGMENT: (PER PARKAR, J.)

Rule. Rule is made returnable forthwith. Shri Vaz appearing for the Respondents waives service. By consent Petitions are heard finally.

2. All these petitions seek to challenge the common Order dated 10.2.2005 passed by the Customs Excise & Service Tax Appellate Tribunal, West Regional Bench at Mumbai against the Petitioners in the four petitions. All the petitions raise the common question about the pre-deposit to be made by them as the condition for hearing of their appeals filed before the Tribunal against the Order of the Commissioner of Central Excise on show cause notices issued for payment of excise duty by the petitioners and therefore these petitions are disposed of by this common order.

3. It is not in dispute that initially the Department had recovered a sum of Rs. 3,65,77,688.00 from the job workers as manufacturers of medicinal products towards excise duty. Later on the Department issued show cause notices to the petitioners to pay the amount of excise duty on the ground that they are in fact the manufacturers of the medicinal products. The petitioner/Companies have challenged the show-cause notice as according to them they are not the

manufacturers. It is not disputed that in case the petitioners are held to be manufacturers, they are liable to pay the excise duty to the extent of Rs.9,07,91,662.00, out of which a sum of Rs. 3,65,77,688/- has already been recovered by the Department from the job workers and the balance of Rs. 5,42,13,974.00 is payable by the manufacturers. By the impugned Order, the petitioners have been asked to deposit a sum of Rs. 2,25,362,86.00 being 25% of the total amount of excise duty payable by the petitioners/Companies, in case they are held to be liable as manufacturers.

4. After perusing the petition and hearing the learned counsel, we feel that prima facie there is an arguable point before the Tribunal in appeals preferred by the petitioners. On our quarry the learned counsel for the Petitioners stated that the petitioners would deposit 10% of the excise duty instead of 25% demanded from them by way of deposit and are ready to go on with the hearing of the appeal on the date that will be fixed by this Court.

5. We are of the view that since a sum of Rs. 3.65 crores and odd amount is already recovered by the Department from the job workers, undoubtedly on the allegation that the petitioner/Companies have paid the aforesaid amount through the job workers, and the said amount is neither refunded by the Department to the job workers nor there is any claim made for refund of the said amount by the job workers nor they had protested the said payment, the said amount will have to be considered before putting the petitioners on condition for hearing of their appeals.

6. Considering all the facts and circumstances of the case, we modify the impugned Order dated 10.2.2005 and direct the four petitioners in the above petitions to deposit a total sum of Rs. 50,00,000.00 towards excise duty within a period of four weeks from today.

For the purpose of deposit, The amount of Rs.50,00,000/- is split up proportionately among the Petitioners as follows :-

i) CFL Pharmaceuticals Ltd. - Rs.11,25,000.00

ii) Wallace Pharmaceuticals Ltd. - Rs.28,20,000.00

iii) Cosme Remedies Ltd. - Rs.10,000/- .

iv) Indi Pharma Pvt. Ltd. - Rs.10,45,000.00

It is made clear that all the contentions of both the sides are kept open.

7. The Tribunal shall dispose of the appeals filed by the petitioners, as far as possible, by the end of October, 2005.

8. All the petitions shall stand disposed of accordingly, with no order as to costs.

S. S. PARKAR, J.

V. M. KANADE, J.

sl.